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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,667	01/26/2004	Olusegun M. Falana	210589US (4081-05300)	8797

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EXAMINER

PENG, KUO LIANG

ART UNIT PAPER NUMBER

1712

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/764,667

Applicant(s)

FALANA ET AL.

Examiner

Kuo-Liang Peng

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/13/06 Amendment.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-23, 25-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-13, 21-23, 25-28, 30-33, 38 is/are rejected.
- 7) ☒ Claim(s) 9, 14-20, 29, 34-37, 39-42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The Applicants' amendment filed on April 13, 2006 is acknowledged. Claims 4 and 24 are deleted. Claims 1-2, 5-7, 9-12, 14, 18-22, 25-27, 29-32 and 34-37 are amended. Now, Claims 1-3, 5-23 and 25-42 are pending.
2. Claim rejection(s) (except Claims 6 and 25) under 35 USC 112 in the previous Office Action (Paper No. 12292005) is/are removed.
3. The text of those sections of Title 35, U.S. code not included in this action can be found in prior Office Action(s).

#### ***Claim Rejections - 35 USC § 112***

3. Rejection of Claims 6 and 25 under 35 USC 112, second paragraph, is maintained because the rejection is adequately set forth in paragraph 5 of Paper No. 12292005. It appears that Applicants have not clarified this issue yet.

***Claim Rejections - 35 USC § 102***

5. Rejection of Claims 1-3, 5-6, 8, 10-12, 21-23, 25-26, 28, 30-32 and 38 under 35 USC 102(b) as being anticipated by Saito (US 4 259 225) is maintained because the rejection is adequately set forth in paragraph 7 of Paper No. 12292005.

Applicant's arguments have been fully considered but they are not persuasive. The focus argument related to the core patentability is discussed below.

For Applicants' argument (Remarks, page 12, 1<sup>st</sup> paragraph), note that the terms "for reducing sag in a wellbore servicing" and "wellbore servicing" in Claims 1 and 21 are merely intended uses, and do not carry any weights of patentability. As such, Claim 1 is directed to a method of combining a cystosol ester compound with a non-aqueous fluid and particles. Claim 21 is drawn to a fluid composition.

***Claim Rejections - 35 USC § 103***

6. Rejection of Claims 1-3, 5-8, 10-12, 21-23, 25-28, 30-32 and 38 under 35 USC 103(a) as being unpatentable over Saito (US 4 259 225) is maintained because the rejection is adequately set forth in paragraph 9 of Paper No. 12292005. Applicant's arguments have been fully considered but they are not persuasive. The focus argument related to the core patentability is discussed below.

For Applicants' argument (Remarks, page 12, 1<sup>st</sup> paragraph), note that the terms "for reducing sag in a wellbore servicing" and "wellbore servicing" in Claims 1 and 21 are merely intended uses, and do not carry any weights of patentability. As such, Claim 1 is directed to a method of combining a cystosol ester compound with a non-aqueous fluid and particles. Claim 21 is drawn to a fluid composition.

7. Rejection of Claims 1-3, 5-6, 8, 13, 21-23, 25-26, 28, 33 and 38 under 35 USC 103(a) as being unpatentable over Bock (US 4 458 757), optionally in view of Saito, Rothrock (US 2 437 046) and/or Smutny (US 3 112 338) is maintained because the rejection is adequately set forth in paragraph 10 of Paper No. 12292005. Applicant's arguments have been fully considered but they are not persuasive. The focus argument related to the core patentability is discussed below.

For Applicants' argument (Remarks, page 13, last paragraph bridging to page 14, 1<sup>st</sup> paragraph), note that the terms "for reducing sag in a wellbore servicing" and "wellbore servicing" in Claims 1 and 21 are merely intended uses, and do not carry any weights of patentability. As such, Claim 1 is directed to a

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method of combining a cystosol ester compound with a non-aqueous fluid and particles. Claim 21 is drawn to a fluid composition.

8. Rejection of Claims 1-6, 10-13, 21-26, 30-33 and 38 under 35 USC 103(a) as being unpatentable over McCabe (US 2005/0087341), optionally in view of Saito, Rothrock (US 2 437 046) and/or Smutny (US 3 112 338) is maintained because the rejection is adequately set forth in paragraph 11 of Paper No. 12292005. Applicant's arguments have been fully considered but they are not persuasive. The focus argument related to the core patentability is discussed below.

For Applicants' argument (Remarks, page 14, last paragraph bridging to page 15, 1<sup>st</sup> paragraph), note that the terms "for reducing sag in a wellbore servicing" and "wellbore servicing" in Claims 1 and 21 are merely intended uses, and do not carry any weights of patentability. As such, Claim 1 is directed to a method of combining a cystosol ester compound with a non-aqueous fluid and particles. Claim 21 is drawn to a fluid composition.

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9. Claims 9, 14-20, 29, 34-37 and 39-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the above references, taken alone or in combination, teaches or fairly suggests the use of the specific particles set forth in the instant claims.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kuo-Liang Peng whose telephone number is (571) 272-1091. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski, can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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klp

June 19, 2006

A handwritten signature in black ink, appearing to read 'Kuo-Liang Peng', written in a cursive style.

Kuo-Liang Peng  
Primary Examiner  
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